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EXAMINER

GEDRICH, SARAH R

ART UNIT PAPER NUMBER

3625

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,015

Applicant(s)

HERSHTIK, ARIE

Examiner

Sarah R. Gedrich

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

- The oath does not state the residence of the inventor.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "8" has been used to designate both a "display screen" and an "exit".

Art Unit: 3625

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "1," "24," "26," and "28" have both been used to designate "a home apparatus."

5. The drawings are objected to because they fail to comply with 37 CFR 1.84(p), 37 CFR 1.84(q), and 37 CFR 1.84(r). Applicant is encouraged to review the drawings' reference characters, lead lines, and arrows in their entirety and make corrections where needed.

6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Shopping Method for Personally or Shop Selected Items.

8. The specification is objected to because of the following informalities:

- The specification states that “selected items may be prepared for pick-up by the consumer at the shop prior to the arrival of the consumer” on page 4, paragraph 5. It is believed the intention was for “selected items may be prepared for pick-up by the **service provider** at the shop prior to the arrival of the consumer.”

Appropriate correction is required.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. **Claims 1-3, 5-8, 12, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenney US Patent No. 6,381,583.**

11. **Referring to claim 1.** Kenny discloses an interactive electronic shopping system and method that creates a virtual shopping facility from an actual facility, such as a grocery store. Kenny further discloses:

Art Unit: 3625

- Placing an order for a shop selected item: The products can be ordered electronically through the Internet system with instruction for pick-up or delivery (Kenney: Column 11, lines 6-8).
 - Going to a shop to personally select item: If the shopper wanted to go to the store and go through the aisles to select individual items him or herself, the desired list can be printed (Kenney: Column 11, 11-13).
12. **Referring to claims 2 and 3.** Kenney further discloses:
- Placing an order with a home apparatus in communication with shop and linking home apparatus with main shop computer: The shopper at one of the local computers accesses the data storage computer through the local computer and communication link (Kenney: Column 8, lines 60-62).
13. **Referring to claims 5 and 6.** Kenney further discloses:
- Using home apparatus as notepad to create order for shop selected item or list for personally selected item: Selection can be made using a light pen, screen touch, keyboard, or other means (Kenney: Column 13, lines 2-3). From the products selections, a list is created for the products to be purchased by the shopper at the actual facility or picked-up where electronically transmitted orders are filled (Kenney: Column 13, lines 8-14).
14. **Referring to claim 7.** Kenney further discloses:
- Alerting shop of arrival time: The products can be ordered electronically with instructions for pick-up (Kenney: Column 11, lines 6-8).
15. **Referring to claim 8.** Kenney further discloses:

Art Unit: 3625

- Preparing order for pick-up: The order could be electronically transmitted for preparation for “carry-out” (Kenney: Column 4, lines 29-32).
16. Referring to claim 9. Kenney further discloses:
- Separate bill for shop item: Automatic electronic payment is available as part of the order process ((Kenney: Column 4, lines 32-33).
17. Referring to claim 12. Kenney further discloses:
- Billing consumer for shop and personally selected items: The individual observes, inspects, and selects products for purchase (Kenney: Column 12, lines 3-4). Payment provisions can be included in the system (Kenney: Column 11, lines 9-10).
18. Referring to claim 14. Kenney further discloses:
- Sending shopping information concerning new products, prices, or sales: Items the store chooses to highlight, such as for “sale” or “special” items, can flash or otherwise be made distinctive (Kenney: Column 3, lines 60-62).
19. Referring to claim 15. Kenney further discloses:
- Preparing order for pick-up: Personnel will select items and hold them for pick-up (Kenney: Column 4, lines 31-32).
 - Collecting items by consumer: The products are ordered for pick-up by the shopper at the store (Kenney: Column 11, line 8).

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3625

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 4, and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney in view of Spallone et al US Patent No. 4,959,686 (hereinafter referred to as "Spallone").

22. **Referring to claim 4.** Kenney discloses the system discussed above. Kenney fails to disclose a main system communicating with a subsystem. Spallone discloses and automated shopping order entry system. Spallone further discloses:

- **Linking main computer with entrance subsystem:** The automated ordering system includes a processor, employee terminal, and a customer terminal located near the supermarket entrance (Spallone: Column 3, lines 55-59).

System will be placed in an "online" mode (Spallone: Column 4, lines 64-65).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kenney to include linking main computer with subsystem as taught by Spallone in order to allow the customer order to be processed as the customer shops (Spallone: Column 3, lines 52-53).

23. **Referring to claim 10.** Kenney fails to disclose obtaining a printed list from the entrance subsystem. Spallone further discloses:

- **Obtaining a printed list from the entrance subsystem:** The customer terminal prompts for selections, such as "Item Selection," confirms order and advises that order is being printed (Spallone: Column 4, line 22-29).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kenney to include obtaining a printed list from the entrance subsystem as taught by Spallone in order to allow the customer to have a copy of the order (Spallone: Column 9, lines 1-2).

24. **Referring to claim 11.** Kenney further discloses:

- **Printed list comprises two groups:** The system includes a printing means from which one or more lists can be printed (Kenney: Column 7, lines 30-32). The shopper controls the computer to automatically organize the list in the manner the shopper wants (Kenney: Column 11, lines 24-26).

25. **Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney in view of Mold US Patent No. 5,978,772.**

26. **Referring to claim 13.** Kenney fails to disclose providing a release note. Mold teaches a merchandise checkout system. Mold further discloses:

- **Providing a release note:** Payment is tendered and the final enlarged receipt is presented (Mold: Column 9, line 66 – Column 20, line 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kenney to include a release note as taught by Mold in order to prevent attempts by customers to defraud the retail establishment (Mold: Column 4, lines 21-22).

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3625

- US Patent No. 6,246,998 – Matsumori discloses a system and method for home grocery shopping including item categorization for efficient delivery and pick-up.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah R. Gedrich whose telephone number is (703) 306-5449. The examiner can normally be reached on M-F 7:30am - 5:00pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (703) 308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sarah Gedrich
Examiner
Art Unit 3625

SRG


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